

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RACHELLE OCTAVIA BOULWARE,

Defendant-Appellee.

UNPUBLISHED

March 2, 2010

No. 293613

Wayne Circuit Court

LC No. 09-010594-01-FC

Before: Servitto, P.J., and Fort Hood and Stephens, JJ.

PER CURIAM.

The prosecution appeals by leave granted the trial court's order granting defendant's motion to quash the information and bindover on the charge of first-degree murder, MCL 750.316. Because the district court did not abuse its discretion in binding defendant over as charged, we reverse.

Defendant was charged with first-degree murder, MCL 750.316, in connection with the stabbing death of Douglas Berry. Following a preliminary examination, the district court judge entered an order binding defendant over as charged. Defendant filed a motion to quash the bindover, which was granted by the circuit court. The charge was reduced to voluntary manslaughter, MCL 750.321.

On appeal, the prosecution argues that the circuit court erred in granting defendant's motion to quash because sufficient evidence was presented at the preliminary examination to support a bindover on the charge of first-degree murder. We agree.

This Court reviews a district court's bindover decision for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784 (2000). Moreover, this Court reviews a circuit court's decision regarding whether to quash a bindover to see if it was consistent with the district court's exercise of discretion; a circuit court decision to quash will be upheld if the district court abused its discretion. *Hudson, supra* at 276. An abuse of discretion occurs when the court chooses an outcome which falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A magistrate should bind a defendant over for trial if it appears that a felony was committed and there is probable cause for charging the defendant with such crime. MCL 766.13; *Hudson, supra* at 277. Probable cause requires a lower quantum of proof than "beyond a

reasonable doubt” and exists when there is evidence sufficient to cause “a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the [defendant's] guilt,” even if he or she has some reservations. *Hudson, supra* at 277, quoting *People v Justice*, 454 Mich 334, 344; 562 NW2d 652 (1997). To bind a defendant over on a charge following a preliminary examination, the magistrate must find that there is direct or circumstantial evidence regarding each element of the crime charged. *Hudson, supra* at 278.

To establish first-degree premeditated murder, a prosecutor must prove that the defendant intentionally killed the victim with premeditation and deliberation. MCL 750.316(1)(a); *People v Taylor*, 275 Mich App 177, 179; 737 NW2d 790 (2007). Premeditation and deliberation require sufficient time between the intent and the act for the defendant to take a second look to reconsider his or her actions before killing. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999). Premeditation and deliberation may be inferred from all the facts and circumstances surrounding the incident, including the previous relationship between the defendant and the victim, the defendant's actions before and after the crime, and the circumstances of the killing. *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995).

Here, the evidence at the preliminary examination established that defendant and Berry, who was intoxicated, were engaged in a verbal argument at the home where they both resided. Defendant was told to go upstairs and just ignore him, which she initially did. While upstairs, defendant texted her cousin, began packing her belongings, phoned her mother for a ride from the residence, then allegedly grabbed a knife from the floor of a bedroom closet and removed its cover. Defendant proceeded down the stairs with the knife in hand and ran into Berry on the stairway, where, according to defendant, the knife entered his chest. Defendant continued downstairs, telling her aunt that she did not mean it, then left the residence and disposed of the knife in a garbage can.

There is no claim that defendant was unarmed or that she did not ultimately cause Berry's death. The only real issue is whether defendant acted intentionally, i.e., with premeditation and deliberation. Based upon the evidence, a person of ordinary prudence and caution could conscientiously entertain a reasonable belief that defendant had time to reconsider her actions and take a second look. Defendant and Berry were in a heated argument and defendant went upstairs, leaving Berry, unarmed, downstairs. She spoke to two people on the telephone, then retrieved a knife and went downstairs. After inflicting a stab wound on Berry, defendant fled the scene taking the knife out of the house. The amount of time it took for defendant to make calls and secure the knife before she killed Berry, and the facts that she deliberately walked back down the stairs to where Berry was and, after the incident, fled the scene, is enough evidence for a prudent person to conscientiously entertain a reasonable belief that defendant committed first-degree murder.

True, there was evidence indicating that the stabbing was an accident, as claimed by defendant. However, where credible evidence exists to support and negate the elements of a crime, a jury must decide the resulting question of fact. *People v Grayer*, 235 Mich App 737; 744 n 3; 599 NW2d 527 (1999). The district court did not abuse its discretion in binding defendant over on the first-degree murder charge, and the circuit court erred in granting defendant's motion to quash.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Karen M. Fort Hood

/s/ Cynthia Diane Stephens